

DEPARTMENT OF HEALTH

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU,)	DOCKET No. 14-CWB-EMD-3	14 APR 29 P2:23 RECEIVED OFFICE OF THE DIRECTOR DEPT OF HEALTH
)		
Petitioner,)		
)	STIPULATION; ORDER	
vs.)		
)		
DEPARTMENT OF HEALTH, STATE OF)	DATE: MAY 1, 2014	
HAWAII,)	TIME: 9:30 A.M.	
)	HEARINGS	
Respondent.)	OFFICER: STEVEN JACOBSON, ESQ	

STIPULATION

Petitioner CITY AND COUNTY OF HONOLULU ("CITY") and Respondent DEPARTMENT OF HEALTH, STATE OF HAWAII ("DOH") hereby stipulate and agree to the following for purposes of this proceeding:

1. The effectiveness of the three contested conditions for enterococci – i.e.: (1) the maximum daily discharge limitation of 72,144 CFU/100 mL; (2) the average monthly discharge limitation of 5,040 CFU/100 mL; and (3) the application of the geometric mean and single sample maximum limitations without depth limitations in the receiving waters – shall be stayed, unless otherwise agreed in a writing duly executed by authorized representatives of both CITY and DOH, pending the Hearings Officer's final decision on this matter, and after an order from the Hearings Officer lifting the stay. During the pendency of the stay, the monitoring for effluent enterococci and shoreline and offshore receiving water enterococci shall be as specified in the permit issued on February 28, 2014, and the monitoring for nearshore enterococci shall not be

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conducted. During the pendency of the stay, the specific water quality criteria for enterococci shall be as follows:

- (a) Within 300 meters (1,000 feet) of the shoreline, including natural public bathing or wading areas, enterococci content shall not exceed a geometric mean of 35 CFU per 100 milliliters in not less than five (5) samples which shall be equally spaced to cover a period between 25 and 30 calendar days. No single sample shall exceed the single sample maximum of 104 CFU per 100 milliliters or the site-specific one-sided 75 percent confidence level. Marine recreational waters along sections of the coastline where enterococci content does not exceed the standard, as shown by the geometric mean test described above, shall not be lowered in quality.
- (b) At locations within 300 meters (1,000 feet) of the shoreline where sampling is less frequent than five samples per 25 to 30 calendar days, no single sample maximum shall exceed the single sample maximum of 104 CFU per 100 milliliters or the site-specific one-sided 75 percent confidence level nor shall the geometric mean of these samples taken during the 30 calendar day period exceed 35 CFU per 100 milliliters.

2. The effectiveness of the two contested conditions for chlordane – i.e.: (1) the maximum daily discharge effluent limitation of 0.58 ug/L and associated pounds per day; and (2) the average annual discharge effluent limitation of 0.076 ug/L and associated pounds per day, as well as the monthly monitoring requirement for chlordane, shall be stayed, unless otherwise agreed in a writing duly executed by authorized representatives of both CITY and DOH, pending the Hearings Officer's final decision on this matter, and after an order from the Hearings Officer

lifting the stay. During the pendency of the stay, the monitoring for chlordane shall be as specified for Remaining Pollutants in the permit issued on February 28, 2014.

3. The effectiveness of the two contested conditions for dieldrin – i.e.: (1) the maximum daily discharge effluent limitation of 0.27 ug/L and associated pounds per day; and (2) the average annual discharge effluent limitation of 0.012 ug/L and associated pounds per day, as well as the monthly monitoring requirement for dieldrin, shall be stayed, unless otherwise agreed in a writing duly executed by authorized representatives of both CITY and DOH, pending the Hearings Officer's final decision on this matter, and after an order from the Hearings Officer lifting the stay. During the pendency of the stay, the monitoring for dieldrin shall be as specified for Remaining Pollutants in the permit issued on February 28, 2014.

4. The effectiveness of the two contested conditions for DDT – i.e.: (1) the maximum daily discharge effluent limitation of 0.14 ug/L and associated pounds per day; and (2) the average annual discharge effluent limitation of 0.004 ug/L and associated pounds per day, as well as the monthly monitoring requirement for DDT, shall be stayed, unless otherwise agreed in a writing duly executed by authorized representatives of both CITY and DOH, pending the Hearings Officer's final decision on this matter, and after an order from the Hearings Officer lifting the stay. During the pendency of the stay, the monitoring for DDT shall be as specified for Remaining Pollutants in the permit issued on February 28, 2014.

5. DOH agrees to consider the dilution analysis CCH has submitted ("HDR | HydroQual Kailua WWTP Outfall Dilution Analysis," dated August 2, 2013). CCH agrees to act in a timely fashion to submit any additional data reasonably requested by DOH and to work with DOH to address any of its concerns regarding the dilution study.

6. The effectiveness of the contested case condition for a Compliance Schedule and associated tasks to fund, evaluate, design and construct treatment processes and facilities to comply with final effluent limitations for *Enterococcus* shall be stayed, unless otherwise agreed in a writing duly executed by authorized representatives of both CITY and DOH, pending the Hearings Officer's final decision on this matter, and after an order from the Hearings Officer lifting the stay.

7. The effectiveness of the contested case condition to report "any" planned physical alterations or additions to the permitted facility shall be stayed, unless otherwise agreed in a writing duly executed by authorized representatives of both CITY and DOH, pending the Hearings Officer's final decision on this matter, and after an order from the Hearings Officer lifting the stay.

8. The stay of the foregoing contested case conditions shall be effective as of March 30, 2014, the date on which the permit issued on February 28, 2014 became effective.

9. The remaining contested case conditions: (1) the single sample maximum and monthly geometric mean interim limitations for *enterococcus* of 1,155,089 CFU/ 100 mL and 898,087 CFU/100mL, respectively ; (2) the single sample maximum effluent limitation for ammonia nitrogen of 69.7 ug/L and associated pounds per day, as corrected by DOH on April 28, 2014 to reflect a single sample maximum effluent limitation for ammonia nitrogen of 69,700 ug/L and associated pounds per day; (3) the use of *Tripneustes gratilla* sea urchin for whole effluent toxicity compliance monitoring; ~~and~~ (4) the requirement to conduct a ZOM dilution study analysis; (5) the requirement to comply with urban area pretreatment requirements and evaluate and develop local limits; and (6) the requirement to submit and implement a BMP based program for controlling animal and vegetable oil and grease, shall not be stayed, unless

otherwise agreed in a writing duly executed by authorized representatives of both CITY and DOH, pending the Hearings Officer's final decision on this matter.

10. The proceedings on Petitioner's Motion to Stay Contested Permit Conditions, including the hearing scheduled for May 1, 2014 shall be continued indefinitely pending further action by the CITY or DOH at a future date, after 30 days written notice to the other party.

11. The dates for the City's contested case hearing as well as all other prehearing activities shall remain as set forth in the Scheduling Order dated April 17, 2014.

12. Positions taken by the parties herein are for purposes of this Stipulation only, do not constitute an admission or agreement with any actions taken except in the context of this Stipulation, and shall not be binding on either party or used as precedent in this or any other case.

DATED: Honolulu, Hawaii, April 29, 2014.

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DEPARTMENT OF HEALTH, STATE OF
HAWAII

APPROVED AND SO ORDERED:

STEVEN JACOBSON
Hearings Officer

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